

REMARKS/ARGUMENTS

Claims 4 and 5 are pending in the present application. Claims 4 and 5 have been rejected under 35 U.S.C. § 102(b) as being clearly anticipated by Ludwig (U.S. Patent No. 5,505,972). Applicant respectfully traverses the rejection.

Claims 4 and 5 have been rejected under 35 U.S.C. § 102(b) as being anticipated by Ludwig. Anticipation "requires that the same invention, including each element and limitation of the claims, was known or used by others before it was invented by the patentee." Hoover Group, Inc. v. Custom Metalcraft, Inc., 66 F.3d 299, 302, 36 U.S.P.Q.2d 1101, 1103 (Fed. Cir. 1995). "[P]rior knowledge by others requires that all of the elements and limitations of the claimed subject matter must be expressly or inherently described in a single prior art reference." Elan Pharms., Inc. v. Mayo Foundation for Medical Educ. & Research, 304 F.2d 1221, 1227, 64 U.S.P.Q.2d 1292 (Fed. Cir. 2002) (citing In re Robertson, 169 F.3d 743, 745, 49 U.S.P.Q.2d 1949, 1950 (Fed. Cir. 1999); Constant v. Advanced Micro-Devices, Inc., 848 F.2d 1560, 1571 7 U.S.P.Q.2d 1057, 1064 (Fed. Cir. 1988)). "The single reference must describe and enable the claimed invention, including all claim limitations, with sufficient clarity and detail to establish that the subject matter already existed in the prior art and that its existence was recognized by persons of ordinary skill in the field of the invention." Id. (citing Crown Operations Int'l, Ltd. v. Solutia Inc., 289 F.3d 1367, 1375, 62 U.S.P.Q.2d 1917, 1921 (Fed. Cir. 2002); In re Spada, 911 F.2d 705, 708 15 U.S.P.Q.2d 1655, 1657 (Fed. Cir. 1990)). See also PPG Indus., Inc. v. Guardian Indus. Corp., 75 F.3d 1558, 1566, 37 U.S.P.Q.2d 1618, 1624 (Fed. Cir. 1996) (emphasis added).

Claim 4 in part requires "wherein the banks of injection needles moves downwardly to inject the meat product by having an injection head connected to a reservoir having a high concentration of brine to penetrate an area of fat, and by having an injection head connected to a reservoir having a low concentration of brine to penetrate an area of lean." The Ludwig disclosure does not provide for needles that have a high concentration of brine that penetrate an area of fat and low concentration areas of brine that penetrate an area of lean. Instead, Ludwig teaches that a first marinate, marinate A, is to be injected into the legs of a chicken and a second marinate, marinate B that is to be injected into the breast portion of the chicken. (See Col. 5, lines 42-59). Similarly, in an alternative embodiment the Ludwig device teaches that the poultry treatment line can include a station 100 at which the poultry is cut up and a means of forwarding the parts of the cut up poultry to an injection machine 110, which can be generally of the type described but which is subdivided into zones, e.g., four zones 111, 112, 113 and 114 with a raise of needles of different diameter. (Col. 6, lines 19-24). Therefore, the Ludwig disclosure teaches injecting the needles into poultry based on parts of the chicken and not based upon the fat or lean makeup of the chicken. Consequently, the Ludwig device does not provide for injection needles which move downwardly to inject a meat product by having an injection head connected to a reservoir having a high concentration of brine to penetrate an area of fat and having an injection head connected to a reservoir having a lower concentration of brine to penetrate an area of lean as is required by independent claim 4. Consequently, the anticipation rejection should be withdrawn.

Additionally, claim 5 depends on claim 4 and for at least this reason is also considered in allowable form.

CONCLUSION

If any issues remain that may be expeditiously addressed in a telephone interview, the Examiner is encouraged to telephone the undersigned at 515/558-0200. All fees or extensions of time believed to be due in connection with this response are attached hereto; however, consider this a request for any extension inadvertently omitted, and charge any additional fees to Deposit Account 50-2098.

Respectfully submitted,



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